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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,879	02/09/2004	Bernard Illy	033339/274068	. 8822
826 ALSTON & B	7590 08/03/2007 IRD LLP	EXAM	INER	
BANK OF AMERICA PLAZA			WONG, LESLIE A	
101 SOUTH TRYON STREET, SUITE 40 CHARLOTTE, NC 28280-4000		E 4000	ART UNIT	PAPER NUMBER
			1761	
			MAIL DATE	DELIVERY MODE
			08/03/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

		Application No.	Applicant(s)
		10/774,879	ILLY ET AL.
	Office Action Summary	Examiner	Art Unit
	· .	Leslie Wong	1761
? Period for F	The MAILING DATE of this communication app Reply	ears on the cover sheet	with the correspondence address
A SHOF WHICHI - Extensio after SIX - If NO per - Failure to Any reply	RTENED STATUTORY PERIOD FOR REPLY EVER IS LONGER, FROM THE MAILING DA ns of time may be available under the provisions of 37 CFR 1.13 (6) MONTHS from the mailing date of this communication. riod for reply is specified above, the maximum statutory period v or reply within the set or extended period for reply will, by statute, or received by the Office later than three months after the mailing atent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUN 36(a). In no event, however, may a vill apply and will expire SIX (6) MC cause the application to become	IICATION. a reply be timely filed ONTHS from the mailing date of this communication. ABANDONED (35 U.S.C. § 133)
Status	,		
2a)⊠ · Tr 3)⊟ Si	esponsive to communication(s) filed on <u>21 M</u> nis action is FINAL . 2b) This nce this application is in condition for allowards accordance with the practice under E	action is non-final.	
Disposition		,	·
4a 5)	aim(s) 1-5 is/are pending in the application. Of the above claim(s) is/are withdrawaim(s) is/are allowed. aim(s) 1-5 is/are rejected. aim(s) is/are objected to. aim(s) are subject to restriction and/or are subject to by the Examine e drawing(s) filed on is/are: a) access	r election requirement. r.	b by the Examiner.
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	ler 35 U.S.C. § 119	•	•
12) Ac a) 1. 1. 2.	knowledgment is made of a claim for foreign	s have been received. s have been received in ity documents have bee	Application No In received in this National Stage
2) Notice of 3) Informati	f References Cited (PTO-892) f Draftsperson's Patent Drawing Review (PTO-948) ion Disclosure Statement(s) (PTO/SB/08) b(s)/Mail Date	Paper No	v Summary (PTO-413) o(s)/Mail Date Informal Patent Application

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winton in view of Burt (US 1718997) for the reasons set forth in rejecting the claims in the last office action.

Winton discloses the conventional composition of cheese and ice cream where these amounts are the same as that claimed by Applicant (see pages 178-180 and 207).

The claims differ as to being molded and having a coating.

Burt discloses the production of a frozen dairy product where a mixture is cast, cooled, reheated, unmolded, dipped, and packaged, wherein a stick member is contemplated (see entire patent).

It would have been obvious to a person of ordinary skill in the art, at the time in the invention was made, to use the coating and molding of Burt in that of Winton because the coating and molding of dairy products to provide strength and/or non-stick properties is conventional and well-known in the art.

Applicant's arguments filed May 21, 2007 have been fully considered but they are not persuasive.

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Applicant argues that Winton does not teach a molded food product, that Burt is directed to frozen products, and that there is no motivation to combine the references.

Winton teaches the conventional composition of cheese and ice cream where these amounts are the same as that claimed by Applicant. Burt teaches the production of a frozen dairy product where a mixture is cast, cooled, reheated, unmolded, dipped, and packaged, wherein a stick member is contemplated. Burt teaches that the coating and molding of a product serves to provide strength and/or non-stick properties.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, all of the prior art is directed to conventional dairy products.

Applicant is using known components to obtain expected results. There is nothing patentable unless the applicant, by a proper showing, further establishes a coaction or cooperative relationship between the selected ingredients, which produces a new, unexpected, and useful function. It is not seen where Applicant has provided support for unexpected results. In the absence of a showing of unexpected results, the amounts claimed are merely a matter of choice and well within the skill of the art. At most the amounts are seen merely as optimization, see In re Boesch 205 USPQ 215.

In the absence of unexpected results, it is not seen how the claimed invention differs from the teachings of the prior art. Applicant's claims are drawn to a combination of known components which produces expected results, see In re Kerkhoven 205 USPQ 1069 and In re Gershon 152 USPQ 602.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is 571-272-1411. The examiner can normally be reached on Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Leslie Wong

Primary Examiner

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LAW July 31, 2007